

IFW

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/763,431
		Filing Date	January 22, 2004
		First Named Inventor	Lutz BIEDERMANN
		Art Unit	3733
		Examiner Name	D. O. Reip
Total Number of Pages in This Submission	24	Attorney Docket Number	564682000100

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	1. Suggestion of Interference Under 37 CFR 41.202(a) (with 2 attachments)
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	2. Return Receipt Postcard
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	MORRISON & FOERSTER LLP		
Signature			
Printed name	Barry E. Bretschneider		
Date	January 10, 2006	Reg. No.	28,055



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Lutz BIEDERMANN et al.

Serial No.: 10/763,431

Filing Date: January 22, 2004

For: BONE SCREW

Examiner: David Owen Reip

Group Art Unit: 3733

SUGGESTION OF INTERFERENCE
UNDER 37 CFR 41.202(a)

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 CFR 41.202(a), applicants respectfully suggest that an interference be declared between this application and Carbone U.S. Patent No. 6,974,460 (hereinafter "the Carbone patent"), issued December 13, 2005, on Serial No. 10/091,068, filed March 5, 2002, and assigned on its face to Stryker Spine. Applicants attach a copy of the Carbone patent for the Examiner's convenience. Applicants also attach a copy of their published application No. 2004/0153077 A1, published August 5, 2004, for the Examiner's reference. On its face, the Carbone patent claims the priority of U.S. provisional application Serial No. 60/322,042, filed September 14, 2001. Applicants respectfully note that on July 9, 2004, they had requested an interference between this application and Carbone's application Serial No. 10/091,068, but the Office never acted on this request.

Applicants also submit herewith a Sixth Preliminary Amendment amending pending claims 6 and 20, canceling claims 11, 15, 19, 25, 59 and 60 and adding new claims 61 and 62.

INTERFERING CLAIMS

Applicants' presently pending claims 6-10, 12, 13, 17, 18, 20-24, 26-35, 40-42, 61 and 62 interfere with Carbone patent claims 1-39, from which they are copied in part as shown by the table below.

PROPOSED COUNT

Proposed Count 1.

The assembly or coupling element of Carbone claims 1-8, 10, 11, 13, 16-20, 22-27, 29, 30, 32, 33, 37 and 38

or

the assembly or coupling element of applicants' claims 6-10, 12, 13, 17, 18, 20-24, 26-35, 40-42, 61 and 62.

CORRESPONDENCE OF PARTIES' CLAIMS TO COUNT

In view of the wording of the Proposed Count above, Carbone's claims 1-8, 10, 11, 13, 16-20, 22-27, 29, 30, 32, 33, 37 and 38 and applicants' claims 6-10, 12, 13, 17, 18, 20-24, 26-35, 40-42, 61 and 62, which have been copied from Carbone's claims, correspond exactly to the Proposed Count. Carbone patent claims 9, 12, 14, 21, 28, 31, 34-36 and 39 define the same patentable invention as the subject matter of the claims making up the Proposed Count within the meaning of "interfering subject matter" in 37 CFR 41.203(a) and thus should be designated as corresponding to the count when the interference is declared.

The following claim chart correlates applicants' claims with the Carbone patent claims from which they are copied in satisfaction of the requirements of 37 CFR 41.202(a)(3):

<u>APPLICANTS' CLAIMS</u>	<u>CARBONE'S PATENT CLAIMS</u>
6	1
7	2
8	3

<u>APPLICANTS' CLAIMS</u>	<u>CARBONE'S PATENT CLAIMS</u>
9	4
10	5
12	6
13	7
40	8
17	10
18	11
61	13
62	15
20	16
21	17
22	18
23	19
24	20
26	22
27	23
28	24
29	25
30	26
31	27
41	29
42	30
32	32
33	33
34	37
35	38

Carbone patent claims 9, 12, 14, 21, 28, 31, 34-36 and 39 add limitations that do not patentably distinguish the subject matter of these claims as a whole from the claims making up

the subject matter of the Proposed Count in view of U.S. Patent Nos. 5,672,176 (Biedermann '176), 6,471,705 (Biedermann '705) and 5,476,464 (Howmedica '464, owned by a Stryker company) and European Patent Application No. EP 0885598 A2 (Howmedica '598, also owned by a Stryker company) and thus correspond substantially to the Proposed Count. Copies of these references are already of record in this application.

Carbone patent claim 9 is unpatentable over the subject matter of the Proposed Count in view of Howmedica '598, which shows an anchoring element, bone screw 100, having a neck adjacent the head that includes a concave surface, as illustrated in Figs. 10 and 11 of the reference.

The "chamfer" at the upper opening of the coupling element of Carbone patent claims 12 and 28 would have been obvious to persons skilled in the art over the subject matter of the Proposed Count because forming such chamfers to provide relief or ease of insertion or removal is well-known in structures of the kind claimed.

Carbone patent claims 14, 21 and 31 are unpatentable over the subject matter of the Proposed Count in view of Howmedica '598 and Biedermann '176. Howmedica '598 Figs. 11 and 12 disclose an anchoring element that has a spherical head 102 and a coupling element 108 including a seat 114 that is substantially conical with sidewalls tapering inwardly toward the lower end of the coupling element. See also paragraphs [0033] and [0044]. In addition, Biedermann '176 Figs. 1-3 disclose a coupling element 5 including a seat 16 that is substantially conical with sidewalls tapering inwardly toward the lower end of the coupling element, as illustrated in FIGS. 1-3 of the reference.

Carbone patent claims 34-36 are unpatentable over the subject matter of the Proposed Count because the angles of intersection set forth in claims 34-36 would have been obvious for use in the assembly of the Proposed Count because of the degrees of movement desired.

Carbone patent claim 39 is unpatentable over the subject matter of the Proposed Count because it would have been obvious to provide a second bore extending from the second plane of

the coupling assembly toward the upper end of the coupling element in view of Fig. 1 of Biedermann '705, which shows a second bore in a coupling element. Since this second bore in the second plane would have to have a second longitudinal axis, the angle of intersection of which is set forth in claim 39 would have been obvious based on the angle of intersection of the first and second planes of claim 38, which forms part of the Proposed Count.

APPLICANTS' ENTITLEMENT TO PRIORITY

This application is a continuation of U.S. Application Serial No. 10/037,698, filed November 9, 2001, now U.S. Patent No. 6,736,820, which claims priority from German patent application Nos. 100 55 888.7, filed November 10, 2000, and 100 65 397.9, filed December 27, 2000. Certified copies of these applications and sworn translations thereof are already of record in the file of this application.

As applicants will show in the following claim chart pursuant to 37 CFR 41.202(a)(6), applicants' first German priority application discloses at least a species within the scope of the Proposed Count, showing applicants' entitlement to the benefit of the November 10, 2000, filing date of that German application for purposes of priority of invention over Carbone, without prejudice to applicants' proof of dates of prior acts of invention other than the filing of their German priority applications:

Proposed Count	Support in Translation of DE 100 55 888.7
<u>Proposed Count 1 (Applicants' claim 6 and Carbone patent claim 1)</u> A bone fixation assembly comprising:	The overall assembly is shown in FIGS. 1-4 as the combination of screw member 1 and receiving part 5.
a coupling element having a first bore coaxial with a first longitudinal axis and a second bore, coaxial with a second longitudinal axis, wherein said first and second longitudinal axes intersect and are in communication with one another;	The receiving part 5 corresponds to the coupling element. The first bore 6, as disclosed in FIGS. 1-4 and mentioned at page 3, lines 2-3, has a longitudinal axis of symmetry 15, as generally disclosed at page 3, lines 25-26 and 31, and at page 4, lines 8-9. The second bore 7 is formed in the receiving part 5 and has its own axis of symmetry, as shown in FIGS. 1-4 and

Proposed Count	Support in Translation of DE 100 55 888.7
	explained at page 3, lines 3-5, and page 4, lines 4-9. The intersecting configuration of the axes of symmetry and communication of the first and second bores is explained in detail at page 4, lines 3-14.
said coupling element including a seat adjacent said lower end of said coupling element, said seat being defined by the inner surface of said coupling element; and	The inner surface of the receiving part 5 defines the first and second bores, which together form a spherically-shaped region on the bottom of the first bore that acts as a seat. See the drawing figures and page 3, lines 1-22.
an anchoring element assembled with said coupling element, said anchoring element having a first end for insertion into bone; and a head spaced from the first end, said head being in contact with said seat of said coupling element.	The anchoring element corresponds to screw member 1, the threaded section 2 of which is designed as the end of the screw member that is to be inserted into the bone. Head 3 is at the opposite end of screw member 1 that is configured for insertion into bone. The spherical screw head is depicted in FIGS. 1, 3 and 4 as being in contact with the seat.

Since applicants' first German priority application constitutes a constructive reduction to practice of a species within the scope of the Proposed Count as of November 10, 2000, more than ten months before Carbone's provisional application filing date of September 14, 2001, applicants are properly named the senior party in the Notice declaring the interference. Applicants reserve the right to challenge Carbone's entitlement to the benefit of its provisional application filing date, if necessary.

SUPPORT FOR INTERFERING CLAIMS IN APPLICANTS' DISCLOSURE

Since applicants' interfering claims are not original application claims and were initially presented to provoke an interference with the application from which the Carbone patent issued, applicants provide the following chart pursuant to 37 CFR 41.202(a)(5) applying the claims pending in this application after the entry of the 6th Preliminary Amendment to the disclosure of this application:

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
6. A bone fixation assembly comprising:	The overall assembly as shown in FIGS. 1-4, which is the combination of screw member 1 and receiving part 5.
a coupling element having a first bore coaxial with a first longitudinal axis and a second bore coaxial with a second longitudinal axis, wherein said first and second longitudinal axes intersect and are in communication with one another;	The receiving part 5 corresponds to the coupling element. The first bore 6, as disclosed in FIGS. 1-4 and mentioned in paragraph [0014], has a longitudinal axis of symmetry 15, as generally disclosed in paragraphs [0014] and [0017]. The second bore 7 is formed in the receiving part 5 and has its own axis of symmetry, as shown in FIGS. 1, 3 and 4 and explained in paragraphs [0014] and [0017]. The intersecting configuration of the axes of symmetry and communication of the first and second bores are explained in detail in paragraph [0017] and can be seen in FIGS 1, 3 and 4.
said coupling element including a seat adjacent said lower end of said coupling element, said seat being defined by the inner surface of said coupling element; and	The inner surface of the receiving part 5 defines the first and second bores, which together form a spherically-shaped region on the bottom of the first bore that acts as a seat. See, paragraph [0014].
an anchoring element assembled with said coupling element, said anchoring element having a first end for insertion into bone and a head spaced from the first end, said head being in contact with said seat of said coupling element.	The anchoring element corresponds to screw member 1, the threaded section 2 of which is designed as the end of the screw member that is to be inserted into the bone. Head 3 is at the opposite end of screw member 1 that is configured for insertion into bone. The spherical screw head is depicted in FIGS. 1, 3 and 4 as being in contact with the seat.
7. The assembly of Claim 6 wherein said coupling element has an upper end and a lower end ,	FIG. 3 shows receiving part 5 with an upper end (approximately adjacent reference numeral 14 in the figure) and a lower end (approximately adjacent reference numeral 11 in the figure).
said first bore extending from said upper end toward said lower end and said second bore extending from said lower end toward said upper end.	The first bore 6 starts from the upper end of the receiving part 5 in the direction of the lower end, and the second bore 7 starts from opening plane 11 and extends in the direction of the upper end of the receiving part

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
	5. See also paragraphs [0013] and [0016].
8. The assembly of Claim 7, wherein said first and second bores are in communication with one another between said upper and lower ends of said coupling element.	FIGS. 1 and 3 both show the communication of the first bore with the second bore. As explained in paragraph [0013], the screw member 1 can pass through the first bore 6 into the second bore 7.
9. The assembly of Claim 7, wherein said upper end of said coupling element defines a first plane and said lower end of said coupling element defines a second plane, and wherein said first and second planes intersect one another.	The transverse plane defined by the top of receiving part 5 as shown in FIG. 3 is the first plane. The second plane is defined by the oblique plane shown in FIG. 3 at the lower end of receiving part 5 that forms angle α with a plane parallel to the first plane. These first and second planes inherently intersect along a line to the right of the view shown in FIG. 3. See also, paragraphs [0016] and [0020].
10. The assembly of Claim 7, wherein said anchoring element projects from said lower end of said coupling element.	FIGS. 1 and 3 show screw member 1 projecting from the lower end of receiving part 5.
12. The assembly of Claim 7, wherein said second bore includes a seat adjacent said lower end of said coupling element,	As explained in paragraph [0014], the bottom of first bore, which perforce is at the top of the second bore, is constructed as a spherically shaped region facing toward the bottom of the receiving part. As explained in paragraphs [0015] and [0018], the embodiments of FIGS. 1 and 3 both have a circular countersink or chamfer 10 made in the edge between the opening plane 11 of the second bore 7 and the edge 12 of the first bore 6 so as to leave a small peripheral section which belongs to the spherical seat.
and wherein said seat is adapted to engage said anchoring element.	Paragraph [0014] explains that the spherical seat has a radius substantially equal to the radius of the spherically shaped head 3 of the anchoring element.
13. The assembly of Claim 12, wherein said anchoring element has a head having a substantially spherical underside adapted to engage said seat.	Paragraph [0014] explains that the spherical seat has a radius substantially equal to the radius of the spherically shaped head 3 of the anchoring element.
17. The assembly of Claim 13, further	As explained in paragraph [0013], the

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. (2004/0153077 A1))
comprising a locking element engageable with said coupling element for locking the position of said coupling element with respect to said anchoring element.	free ends 13, 14 are threaded to accept a nut or screw which can act as a pressure member on a rod inserted into the U-shaped recess 8.
18. The assembly of Claim 17, wherein said locking element urges a stabilizing rod toward said lower end of said coupling element which in turn forces said head of said anchoring element against said seat for locking said coupling element and said anchoring element from further movement relative to one another.	See claim 17 and FIGS. 1 and 3. The necessary result of the engagement of the nut or screw disclosed in paragraph [0013] to fix the rod inserted into U-shaped recess 8 is to cause the rod to bear down on head 3, pushing it into engagement with the seat in the lower end of receiving part 5.
20. The assembly of Claim 6, wherein said coupling element has an exterior surface, an upper end and a lower end, said rod-receiving openings extending from said upper end toward said lower end, and wherein said coupling element comprises cuts between said exterior surface and said rod-receiving openings for minimizing the width of said coupling element.	As shown in FIGS. 1 and 3, and as explained in paragraph [0013], receiving part 5 has an external surface and upper and lower ends. The rod-receiving openings are formed by legs 13, 14 forming the sides of U-shaped recess 8. The cuts are shown as unnumbered cut-away portions on the outsides of legs 13, 14 extending from the upper end of receiving part 5 what appears to be about 40% of the distance from the upper end to the lower end of receiving part 5.
21. The assembly as claimed in Claim 6, wherein said anchoring element is a screw fastener having screw threads extending from said first end toward a second end thereof.	FIGS. 1, 3 and 4 shown threaded screw member 1 having threads extending from the end of the screw member 1 distal from the receiving part 5 toward the head 3.
22. A bone fixation assembly comprising:	The overall assembly as shown in FIGS. 1-4, which is the combination of screw member 1 and receiving part 5.
a coupling element having an upper end defining a first plane, a lower end defining a second plane, and at least one bore extending from said upper end toward said lower end, wherein said first and second planes intersect one another;	The receiving part 5 corresponds to the coupling element. The first bore 6, as disclosed in FIGS. 1-4 and mentioned in paragraph [0014], has a longitudinal axis of symmetry 15, as generally disclosed in paragraphs [0014] and [0017]. The second bore 7 is formed in the receiving part 5 and has its own axis of symmetry, as shown in FIGS. 1, 3 and 4 and explained in paragraphs [0014] and [0017]. The intersecting configuration of the

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077-A1))
	axes of symmetry and communication of the first and second bores are explained in detail in paragraph [0017] and can be seen in FIGS 1, 3 and 4.
an anchoring element assembled with said coupling element, said anchoring element being adapted for insertion into bone; and	The anchoring element corresponds to screw member 1, the threaded section 2 of which is designed as the end of the screw member that is to be inserted into the bone.
said coupling having a U-shaped opening that extends from the upper end of said coupling element toward the lower end of said coupling element, wherein the U-shaped element is adapted to receive a stabilizing rod.	The rod-receiving openings are formed by legs 13, 14 forming the sides of U-shaped recess 8. As explained in paragraph [0013], the free ends 13, 14 are threaded to accept a nut or screw which can act as a pressure member on a rod inserted into the U-shaped recess 8.
23. The assembly of Claim 22, wherein said coupling element includes at least one bore extending between said upper end and said lower end for receiving said anchoring element.	As shown in FIGS. 1 and 3, and as explained in paragraph [0013], the first bore is open and its diameter is of such a size that screw member 1 can be guided through the open end of the first bore so that head 3 can go as far as the bottom of the first bore.
24. The assembly of Claim 22, wherein said coupling element has a seat shaped to allow said coupling element to pivot with respect to said anchoring element.	As explained in paragraph [0014], the bottom of first bore, which perforce is at the top of the second bore, is constructed as a spherically shaped region facing toward the bottom of the receiving part. As explained in paragraphs [0015] and [0018], the embodiments of FIGS. 1 and 3 both have a circular countersink or chamfer 10 made in the edge between the opening plane 11 of the second bore 7 and the edge 12 of the first bore 6 so as to leave a small peripheral section which belongs to the spherical seat.
25. The assembly of Claim 24, wherein said anchoring element has a head with a substantially spherical shape and said coupling element has a seat adjacent said lower end thereof, and wherein said spherical head is adapted to engage said seat.	Paragraph [0014] explains that the spherical seat has a radius substantially equal to the radius of the spherically shaped head 3 of the anchoring element.

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
26. The assembly of Claim 25, wherein said head has at least one depression adapted to receive a driver for driving said anchoring element into bone.	Head 3 has a recess 4 for engagement with a socket screw key. Paragraph [0012].
27. The assembly of Claim 25, wherein said anchoring element includes a reduced diameter neck for facilitating pivotal movement of said coupling element with respect to said anchoring element.	FIGS. 1-4 show that the screw member 1 has a section between head 3 and the threaded portion that has a smaller outside diameter than either the head or the threads on the screw member.
28. A coupling element having an upper end and a lower end comprising:	FIGS. 1 and 3 show receiving part 5 with an upper end (approximately adjacent reference numeral 14 in the figure) and a lower end (approximately adjacent reference numeral 11 in the figure).
a first section extending from said upper end toward said lower end of said coupling element, said first section including a first bore coaxial with a first longitudinal axis;	The receiving part includes a first bore 6 that starts from the upper end of the receiving part 5 and extends in the direction of the lower end of the receiving part. This is the "first section." FIGS. 1 and 3 show that this first bore has a longitudinal axis. See also, paragraph [0017].
a second section extending from said lower end toward said upper end of said coupling element, said second section having a second bore coaxial with a second longitudinal axis that intersects said first longitudinal axis; and	The receiving part also includes a second bore 7 that starts from opening plane 11 and extends in the direction of the upper end of the receiving part 5. This is the "second section." FIGS. 1 and 3 show that this second bore has a longitudinal axis. See also, paragraph [0017]. As explained in paragraphs [0015]-[0019], especially in paragraph [0017], the longitudinal axes of the first and second bores intersect.
rod-receiving openings extending between said upper and lower ends of said coupling element and being adapted to receive an orthopedic rod.	The rod receiving openings are the U-shaped recesses 8 in the receiving part 5 having side legs 13 and 14 which extend toward the open end of the receiving part. See, paragraph [0014].
29. The coupling element of Claim 28, wherein said second bore includes a seat adjacent said lower end of said coupling	As explained in paragraph [0014], the bottom of first bore, which perforce is at the top of the second bore, is constructed as a

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
element.	spherically shaped region facing toward the bottom of the receiving part. As explained in paragraphs [0015] and [0018], the embodiments of FIGS. 1 and 3 both have a circular countersink or chamfer 10 made in the edge between the opening plane 11 of the second bore 7 and the edge 12 of the first bore 6 so as to leave a small peripheral section which belongs to the spherical seat.
30. The coupling element of Claim 29, wherein said seat is adapted to engage a head of an anchoring element secured with said coupling element so that said coupling element and said anchoring element are pivotable relative to one another.	Paragraph [0014] explains that the spherical seat has a radius substantially equal to the radius of the spherically shaped head 3 of the anchoring element. Paragraph [0017] explains how the screw member is pivotable relative to the receiving part, as is apparent from FIG. 3.
31. The coupling element of Claim 30, wherein said seat is adapted to engage an underside of said head of said anchoring element.	Paragraph [0014] explains that the spherical seat has a radius substantially equal to the radius of the spherically shaped head 3 of the anchoring element.
32. The coupling element of Claim 28, wherein said coupling element has an outer surface with notches for engagement by an instrument for positioning said coupling element with respect to an orthopedic rod.	As shown in FIGS. 1 and 3, and as explained in paragraph [0013], receiving part 5 has an external surface that has unnumbered cut-away portions on the outsides of legs 13, 14 extending from the upper end of receiving part 5 what appears to be about 40% of the distance from the upper end to the lower end of receiving part 5. These cut-away portions correspond to the notches and are intended for engagement with a tool that can be used to position the receiving part 5 with respect to the rod inserted into U-shaped recess 8.
33. A coupling element for a bone fixation assembly comprising:	The overall assembly as shown in FIGS. 1-4, which is the combination of screw member 1 and receiving part 5.
an upper end defining a first plane; a lower end defining a second plane;	FIG. 3 shows receiving part 5 with an upper end (approximately adjacent reference numeral 14 in the figure) and a lower end (approximately adjacent reference numeral 11 in the figure).

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
at least one bore extending between said upper end and said lower end, said at least one bore being adapted to receive an anchoring element,	The first bore 6 starts from the upper end of the receiving part 5 in the direction of the lower end, and the second bore 7 starts from opening plane 11 and extends in the direction of the upper end of the receiving part 5.
wherein said first plane and said second plane intersect one another.	As explained in paragraphs [0015]-[0019], especially in paragraph [0017], the planes of the longitudinal axes of the first and second bores intersect.
34. The coupling element as claimed in Claim 33, wherein said coupling element has a first bore extending from said upper end toward said lower end and a second bore extending from said lower end toward said upper end,	The first bore 6 starts from the upper end of the receiving part 5 in the direction of the lower end, and the second bore 7 starts from opening plane 11 and extends in the direction of the upper end of the receiving part 5.
and wherein said first and second bores are angled relative to one another.	Disclosed in paragraph [0017].
35. A coupling element for a pedicle screw assembly, comprising:	The coupling element is receiving part 5.
said coupling including an inner surface having a first section at an upper end of said coupling element, said first section defining a first bore extending through said coupling element that is coaxial with a first longitudinal axis;	The receiving part includes a first bore 6 that starts from the upper end of the receiving part 5 and extends in the direction of the lower end of the receiving part. This is the "first section." FIGS. 1 and 3 show that this first bore has a longitudinal axis. See also, paragraph [0017].
the inner surface having a second section at a lower end of said coupling element, said second section defining a second bore extending through said coupling element that is coaxial with a second longitudinal axis, wherein said first and second longitudinal axes intersect one another.	The receiving part also includes a second bore 7 that starts from opening plane 11 and extends in the direction of the upper end of the receiving part 5. This is the "second section." FIGS. 1 and 3 show that this second bore has a longitudinal axis. See also, paragraph [0017]. As explained in paragraphs [0015]-[0019], especially in paragraph [0017], the longitudinal axes of the first and second bores intersect.
40. The assembly of claim 13, wherein said anchoring element includes a neck	As can be seen from FIGS. 1 and 3, the screw member has a unthreaded portion on its

Applicants' Pending Claims	Supporting Disclosure in Involved Application (As Shown in Published Application No. 2004/0153077 A1))
adjacent said head having a diameter less than the diameter of said threaded portion for facilitating pivotal movement of said coupling element and said anchoring element relative to one another.	shank between the head 3 and threaded section 2 that is smaller in diameter than the outer diameters of the threads.
41. The coupling element of Claim 30, wherein said inner surface includes threads adjacent said upper end thereof for engaging a locking element for securing an orthopedic rod within said rod receiving openings of said coupling element.	As explained in paragraph [0014], a thread for engagement with a nut or screw is provided at the free ends of the side legs 13, 14 that serves to fix a rod inserted into the U-shaped recess 8.
42. The coupling element of Claim 34, wherein said locking element has external threads adapted for threading into said internal threads of said coupling element.	The locking element disclosed in paragraph [0014] is threaded to engage with the threads at the free ends of side legs 13, 14.
61. The assembly of claim 6, wherein said anchoring element is a separate member assembled with said coupling element so that said coupling element and said anchoring element are movable relative to one another.	Since screw member 1 is inserted into receiving part 5, as explained in paragraph [0013], they are by nature separate before they are assembled. As explained in paragraph [0016], screw member 1 is "pivotable," i.e., movable, with respect to receiving part 5.
62. The assembly of claim 6, further comprising a locking element engageable with said coupling element for securing a stabilizing rod within said coupling element.	As explained in paragraph [0013], the free ends 13, 14 are threaded to accept a nut or screw which can act as a pressure member on a rod inserted into the U-shaped recess 8.

COMPLIANCE WITH 35 USC 135(b)

Although 37 CFR 41.202 does not require a demonstration that applicants have complied with 35 USC 135(b), applicants include this explanation in order to forestall any questions on the issue.

The 18-month publication of the application that issued as the Carbone patent took place March 20, 2003, less than one year prior the presentation in this application of claims 6-39 in the Second Preliminary Amendment filed March 18, 2004. The chart on pages 7 and 8 of the Second Preliminary Amendment explains the correspondence between claims 6-39 and

Carbone's claims. Thus, claims presented in this application within the time period specified by 35 USC 135(b)(2) interfered with Carbone's claims under the criteria approved by the court in *In re Berger*, 279 F.3d 975, 61 USPQ2d 1523 (Fed. Cir. 2002). Furthermore, this suggestion and applicants' pending claims have been presented within one year of the issuance of the Carbone patent, showing compliance with 35 USC 135(b)(1).

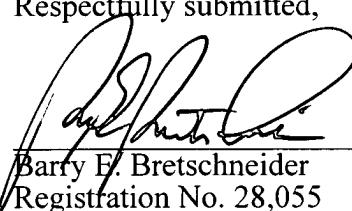
CONCLUSION

Applicants have copied claims from Carbone's patent into their application. Applicants are presumptively the prior inventors of the claimed subject matter as against Carbone at least by virtue of their earlier effective filing date and desire an interference to get the PTO's judgment that they are the actual prior inventors entitled to a patent on these claims and that all of Carbone's patent claims should be canceled. Applicants' opportunity to do so should not be delayed.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952, referencing Docket No. 564682000100.**

Dated: January 10, 2006

By:


Barry E. Bretschneider
Registration No. 28,055

Morrison & Foerster LLP
1650 Tysons Boulevard, Suite 300
McLean, VA 22102
Telephone: (703) 760-7743
Facsimile: (703) 760-7777